

# **Exhibit 63**

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC  
and THE REYNOLDS and  
REYNOLDS COMPANY,

Madison, Wisconsin  
June 27, 2017  
1:50 p.m.

Defendants.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT-SECOND DAY OF EVIDENTIARY HEARING

**AFTERNOON SESSION**

HELD BEFORE THE HONORABLE JAMES D. PETERSON,

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.  
BY: JENNIFER GREGOR  
One East Main Street, Ste. 500  
Madison, Wisconsin 53703

Kellogg, Hansen, Todd, Figel & Frederick, PLLC  
BY: MICHAEL NEMELKA  
AARON PANNER  
DAVID SCHWARZ  
DEREK HO  
JOSHUA HAFENBRACK  
KEVIN MILLER  
JOHANNA ZHANG  
1615 M Street, NW, Ste. 400  
Washington, DC 20036

Also present: Stephen Cottrell - Authenticom president  
Steve Robb - IT technician

Lynette Swenson RMR, CRR, CRC  
U.S. District Court Federal Reporter  
120 North Henry Street, Rm. 520  
Madison, Wisconsin 53703

1 they bought, which vendor, is just an astronomical time  
2 that we can't do.

3 THE COURT: All right. So just to quickly  
4 paraphrase it, so you basically custom negotiate with  
5 each of your vendors what their package price is going to  
6 be.

7 THE WITNESS: Yes. And data elements. Yes, all  
8 the functionalities they use, yes, sir.

9 THE COURT: So I don't want to stretch this too  
10 far. So you've 147 vendors and they have something like  
11 50,000 individual interfaces. You don't custom negotiate  
12 each interface, but that's part of what you're looking at  
13 when you negotiate the package price for the vendor.

14 THE WITNESS: Yes. And what you run is pretty  
15 much on average about three-and-a-half to four packages  
16 per vendor. And then on top of that, they will also have  
17 what we call *ala carte*, to where you have a service and  
18 this guy might want parts for some reason because that's  
19 what the dealer really wants. So he can add in an  
20 *ala cart* one, which would be a single interface, for  
21 special ordering parts for those kind of things,  
22 depending what they want.

23 THE COURT: So when you do this, is there -- I  
24 mean bottom line, is some sort of really complicated  
25 price list that you have a price for each one of those

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1 very many elements? Or you put it together and you  
2 negotiate it?

3 THE WITNESS: I put it together and I negotiate  
4 it.

5 THE COURT: Okay. All right. And you want to  
6 keep that secret why?

7 THE WITNESS: Because then what happens is they  
8 get into a comparison. Well, I'm paying \$700 and I'm  
9 paying \$600. Yeah, but you're getting five more fields  
10 more and you've getting real-time. And you're getting --  
11 it gets into be way too -- I don't have time to do all  
12 that and put it together and negotiate. Because, you  
13 know, car dealers and vendors, their strength is  
14 negotiations, and so they want to take all of the  
15 information they can get and come hit me. And so I can't  
16 get into those types of negotiations if I'm comparing  
17 something. We're not necessarily always comparing apples  
18 to apples. They get into apples to oranges and want that  
19 price and we just negotiate based on --

20 THE COURT: So part of it is just it improves  
21 the strength of your negotiating position if you keep it  
22 secret.

23 THE WITNESS: Sure, it does. Sure, it does.

24 BY MS. GULLEY:

25 Q Are you allowed to tell one vendor what another

1 vendor's data elements are?

2 A Absolutely not. In fact, even I can't --  
3 internally our organization is set up completely  
4 separate. The actual infrastructure and all the data  
5 elements no one else can see.

6 Q Okay. Looking at competition for a moment. Exhibit  
7 -- defendants' Exhibit 161 is the declaration of Ron  
8 Lamb. We've heard he's the former president and most  
9 immediate past president of the Reynolds and Reynolds  
10 Company. You agree with that --

11 A Yes.

12 Q -- general comment?

13 A Yes.

14 Q And did you talk to Mr. Lamb about his  
15 declaration --

16 A Yes, I did.

17 Q -- here? He mentions on the last page that  
18 "Competition in the DMS market has heightened to a fever  
19 pitch" at the very end of paragraph 30. Do you see that?

20 A Yes.

21 Q Do you agree with that?

22 A Yes, I do.

23 Q Are you still losing customers?

24 A Yes.

25 Q Is this a surprise to you?

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1 Q Do you know how vendor client is defined in this  
2 contract?

3 A That would be dealer.

4 Q That's the dealer; right?

5 A Correct.

6 Q Do you see that this little (ii) prohibits the  
7 vendor from getting the data from the dealer?

8 A Yes, it would in this case.

9 Q So if a vendor is part of the 3PA Program, it is  
10 prohibited from getting the data from the dealer; right?

11 A That's correct. Well, there are cases where they  
12 still can, but in general that's true.

13 Q So it's false that dealers can just send the data to  
14 the vendors, at least those who are in the 3PA Program;  
15 right?

16 A Send them directly to the dealer?

17 Q Right.

18 A That's correct. Send them directly to the vendor?  
19 Yes, that's correct.

20 Q And this restriction that they have to get the data  
21 from the interface, this restriction lasts forever,  
22 doesn't it?

23 A It lasts while they're in the program.

24 Q It lasts forever, doesn't it?

25 A While they're in the program.

1 Q Let's go to Section 4(I). Are you there? Section 4  
2 (I). Are you there?

3 A Yes.

4 Q And then this is the section on *Term and*  
5 *Termination*. Section 4 is. Do you see that? So will  
6 you read for the Court what Section 4(I) says?

7 THE COURT: You don't have to. I can read it.  
8 I speed readed it.

9 Q "So all restrictions set forth in Section 1," that's  
10 the section we just were, "of this agreement shall  
11 survive the termination of this agreement" --

12 THE COURT: You didn't have to read it either.  
13 I get it.

14 BY MR. NEMELKA:

15 Q So how can CDK possibly justify imposing this  
16 exclusive dealing term forever?

17 THE COURT: Do you know if there's any  
18 justification for doing that?

19 THE WITNESS: No, and I'm not -- I'm puzzled by  
20 that.

21 BY MR. NEMELKA:

22 Q And you're in charge -- you're in charge of the 3PA  
23 Program, aren't you?

24 A Well, I'm wondering this is a 2016 contract. I  
25 would want to see if what the current one is.

1 Q Are you aware that counsel has represented -- your  
2 counsel has represented this is the current version of  
3 the 3PA contract in their statement of facts that they  
4 submitted to the Court?

5 A Well, let's see. What's the date on it? Well, we  
6 don't -- we don't know when this contract was -- what  
7 version of the contract this is. So --

8 Q All right.

9 A -- I'm surprised to see that in there, that that's  
10 something that I would want to look at more carefully.

11 Q Okay. We've talked about how CDK prohibits vendors  
12 from putting any access fee on their invoices to dealers;  
13 right? We've already talked about that today.

14 A I'm sorry. Please repeat that.

15 Q We're talked about CDK prohibits vendors from  
16 putting any data access fee on their invoices to dealers.

17 A Yes.

18 Q But, in fact, you do more than just -- you prohibit  
19 more than just that, don't you? You also prohibit any  
20 vendor from even telling the dealers about the  
21 integration of prices that CDK charges; right?

22 A Yes.

23 Q And let's go to Section 8.

24 A Section 8 of the same agreement?

25 Q Yes. Actually what I what to focus on is the last



1 BY MR. PANNER:

2 Q Dr. Addanki, again I think you may have  
3 misunderstood my question. In 2014, Reynolds system is  
4 closed; correct?

5 A Yes.

6 Q And CDK's system is open?

7 A Yes.

8 Q And CDK is making a decision about whether to move  
9 to closed system.

10 A Yes.

11 Q And in making the evaluation as to whether to do  
12 that, the fact that Reynolds system is closed was very  
13 important to it in determining the competitive  
14 consequences of going to a closed system. True or false?

15 A I just don't know.

16 Q You haven't looked at documents that indicate that?

17 A Oh. Did they take into account the fact that it was  
18 an open system and a closed system? Yes, absolutely they  
19 did.

20 Q And it was important to them in terms of evaluating  
21 the competitive consequences of closing their --

22 A I just don't know how important it was. That's my  
23 point.

24 Q Okay. Fair enough.

25 A They absolutely took it into account.

1 Q It would have been a valuable thing for CDK -- I'm  
2 not asking you to give me an estimate of how valuable.  
3 But it would be a valuable thing for CDK to have  
4 assurances from Reynolds that it does not intend to open  
5 its system; correct?

6 A If you're asking would there be some value greater  
7 than zero having that assurance, possibly, yes.

8 Q And do you think that it was of business  
9 significance to Reynolds that CDK made a decision to  
10 close its system?

11 A I actually haven't seen any of Reynolds' documents  
12 on it. I would expect that Reynolds probably had mixed  
13 feelings about it.

14 Q But let me ask you -- let me try to ask you this  
15 question: There's no dispute that in a concentrated  
16 market -- and you would agree with me that the DMS market  
17 is highly concentrated, wouldn't you?

18 A It's concentrated, yes.

19 Q That in a concentrated market, rivals monitor the  
20 behavior of the other competitors, other large  
21 competitors in the market, and make decisions about how  
22 to conduct their business based in part on what their  
23 competitors are doing; correct?

24 A Yes. There isn't a difference in concentrated  
25 markets.

1 Q No doubt about it; right?

2 A That's right.

3 Q So what's going on at a minimum is coordination  
4 between DMS -- excuse me. There's coordination between  
5 CDK and Reynolds with respect to the policy of keeping a  
6 closed system.

7 A No, I wouldn't agree with that at all.

8 Q Before, a point of competitive differentiation  
9 between CDK and Reynolds was that CDK was open and  
10 Reynolds was closed; correct?

11 A That was a point of differentiation, that you  
12 stressed, yes.

13 Q And when CDK decided to close its system, that was  
14 no longer a point of competitive differentiation;  
15 correct?

16 A That's correct.

17 Q And that reduced the intensity of competition  
18 between the two providers; isn't that fair?

19 A No, I haven't seen evidence of that.

20 Q Okay. Do you have an -- well, I should ask you  
21 this: Many economists are very good with computers and I  
22 want to know whether you consider yourself an expert in  
23 computers and information technology.

24 A I've been a software author, a published software  
25 author. I have consulted in many cases involving